

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

AUDRA McCOWAN, et al.,

Plaintiffs,

v.

CITY OF PHILADELPHIA, et al.

Defendants.

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Civil Action No. 19-3326-KSM

ORDER

AND NOW, this ____ day of _____, 2020, upon consideration of Defendants' response to Plaintiffs' Motion to Compel Discovery Responses, it is hereby **ORDERED** that the Motion (ECF No. 100) is **DENIED** with prejudice.

BY THE COURT:

KAREN S. MARSTON, J.

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**DEFENDANTS' RESPONSE TO PLAINTIFFS'
MOTION TO COMPEL DISCOVERY RESPONSES**

1. Admitted.

2. Denied as stated. The City of Philadelphia responded to plaintiffs' Requests for Production of Documents within the time allotted by the Federal Rules of Civil Procedure with well-founded objections and several thousand pages of responsive documents, while plaintiffs finally responded to the City's written discovery fifteen days late and only after a Motion to Compel and intervention from the Court.

3. Denied as stated. Depositions revealed the existence of documents plaintiffs wanted, most of which were not requested in conformance with Rule 34 but rather through a "deficiency notice." The City produced responsive documents on September 4, 2020.

4. Admitted.

5. Denied as stated. Depositions revealed the existence of documents plaintiffs wanted, most of which were not requested in conformance with Rule 34 but rather through a "deficiency notice." The City produced responsive documents on September 4, 2020.

6. Admitted.

7. Denied as stated. No responsive documents were withheld.

8. Denied as stated. No responsive documents were withheld.

9. Denied. Personnel files for Defendant Ross and counsel for Defendant Younger have been produced to plaintiffs.

10. Denied. Personnel files for Defendant Ross and counsel for Defendant Younger have been produced to plaintiffs.

11. Defendants set forth a valid objection to plaintiffs' request, a request not proportional to the needs of this case which would therefore cause the City to incur burden and expense that outweighs the likely benefit of the information sought.

12. Denied. As stated in the City, et al's Motion to Dismiss Plaintiffs' Second Amended Complaint, plaintiffs have not alleged a legally sufficient Monell claim, making any discovery on this issue – particularly the onerous requests made by plaintiffs – disproportional to the needs of this case. Defs.' Mem. In Support of Mot. to Dismiss, ECF No. 54 at 13-16.

13. Denied. Defendants have asserted no defenses as they have not yet answered plaintiffs' Complaint.

14. Denied. Plaintiffs have failed to meet the pleading standard for a Monell claim, which requires plaintiffs to "identify a custom or policy, and specify what exactly that custom or policy was." McTernan v. City of York, 564 F.3d 636, 658 (3d Cir. 2009). Plaintiffs' requests constitute a fishing expedition not proportional to the needs of this case.

15. Three opinions from the 1990s¹ and a context-free order from an unrelated case provide no basis for this Court to supply the rod and reel for plaintiffs' fishing expedition.

¹ None of these cases involves Section 1983 or discovery. One case is provided with no pincite (Aman v. Cort Furniture Rental, 85 F.3d 1074 (3d Cir. 1996)); another addresses a trial court's ruling on an objection to trial testimony (Glass v. Philadelphia Elec. Co., 34 F.3d 188, 194 (3d Cir. 1994)); and the last went unpublished before being abrogated (Hurley v. The Atlantic City Police Dept., 1999 U.S. App. LEXIS 4582 (3d Cir. March 18, 1999)).

WHEREFORE, Defendants respectfully request that plaintiffs' Motion to Compel Discovery Responses be denied, with prejudice.

Respectfully submitted,

**CITY OF PHILADELPHIA
LAW DEPARTMENT**

/s/ Daniel R. Unterburger

DANIEL R. UNTERBURGER

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Dated: October 2, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on the date listed below the foregoing Response to Plaintiffs' Motion to Compel Discovery Responses was filed electronically and made available for download and viewing.

Respectfully submitted,

**CITY OF PHILADELPHIA
LAW DEPARTMENT**

/s/ Daniel R. Unterburger
DANIEL R. UNTERBURGER
Assistant City Solicitor

Dated: October 2, 2020